

2576a of title 10, United States Code, has been distributed equitably between larger, well-resourced municipalities and units of government and smaller, less well-resourced municipalities and units of government; and

(B) an identification of potential modifications to the authority under such section to ensure that property transferred under such section is transferred in a manner that provides adequate opportunity for participation by smaller, less well-resourced municipalities and units of government.

(3) REPORT.—Not later than December 1, 2022, the Director of the Defense Logistics Agency shall submit to the congressional defense committees a report on the results of the study conducted under paragraph (1).

**SA 4433.** Mr. PORTMAN (for himself and Mr. CARDIN) submitted an amendment intended to be proposed to amendment SA 3867 submitted by Mr. REED and intended to be proposed to the bill H.R. 4350, to authorize appropriations for fiscal year 2022 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle G of title XII, add the following:

**SEC. 1283. ECONOMIC DEFENSE RESPONSE TEAMS.**

(a) PILOT PROGRAM.—Not later than 180 days after the date of the enactment of this Act, the President, acting through the Secretary of State, shall develop and implement a pilot program for the creation of deployable economic defense response teams to help provide emergency technical assistance and support to a country subjected to the threat or use of coercive economic measures and to play a liaison role between the legitimate government of that country and the United States Government. Such assistance and support may include the following activities:

(1) Reducing the partner country's vulnerability to coercive economic measures.

(2) Minimizing the damage that such measures by an adversary could cause to that country.

(3) Implementing any bilateral or multilateral contingency plans that may exist for responding to the threat or use of such measures.

(4) In coordination with the partner country, developing or improving plans and strategies by the country for reducing vulnerabilities and improving responses to such measures in the future.

(5) Assisting the partner country in dealing with foreign sovereign investment in infrastructure or related projects that may undermine the partner country's sovereignty.

(6) Assisting the partner country in responding to specific efforts from an adversary attempting to employ economic coercion that undermines the partner country's sovereignty, including efforts in the cyber domain, such as efforts that undermine cybersecurity or digital security of the partner country or initiatives that introduce digital technologies in a manner that undermines freedom, security, and sovereignty of the partner country.

(7) Otherwise providing direct and relevant short-to-medium term economic or other assistance from the United States and marshalling other resources in support of effective responses to such measures.

(b) INSTITUTIONAL SUPPORT.—The pilot program required by subsection (a) should include the following elements:

(1) Identification and designation of relevant personnel within the United States Government with expertise relevant to the objectives specified in subsection (a), including personnel in—

(A) the Department of State, for overseeing the economic defense response team's activities, engaging with the partner country government and other stakeholders, and other purposes relevant to advancing the success of the mission of the economic defense response team;

(B) the United States Agency for International Development, for the purposes of providing technical, humanitarian, and other assistance, generally;

(C) the Department of the Treasury, for the purposes of providing advisory support and assistance on all financial matters and fiscal implications of the crisis at hand;

(D) the Department of Commerce, for the purposes of providing economic analysis and assistance in market development relevant to the partner country's response to the crisis at hand, technology security as appropriate, and other matters that may be relevant;

(E) the Department of Energy, for the purposes of providing advisory services and technical assistance with respect to energy needs as affected by the crisis at hand;

(F) the Department of Homeland Security, for the purposes of providing assistance with respect to digital and cybersecurity matters, and assisting in the development of any contingency plans referred to in paragraphs (3) and (6) of subsection (a) as appropriate;

(G) the Department of Agriculture, for providing advisory and other assistance with respect to responding to coercive measures such as arbitrary market closures that affect the partner country's agricultural sector;

(H) the Office of the United States Trade Representative with respect to providing support and guidance on trade and investment matters; and

(I) other Federal departments and agencies as determined by the President.

(2) Negotiation of memoranda of understanding, where appropriate, with other United States Government components for the provision of any relevant participating or detailed non-Department of State personnel identified under paragraph (1).

(3) Negotiation of contracts, as appropriate, with private sector representatives or other individuals with relevant expertise to advance the objectives specified in subsection (a).

(4) Development within the United States Government of—

(A) appropriate training curricula for relevant experts identified under paragraph (1) and for United States diplomatic personnel in a country actually or potentially threatened by coercive economic measures;

(B) operational procedures and appropriate protocols for the rapid assembly of such experts into one or more teams for deployment to a country actually or potentially threatened by coercive economic measures; and

(C) procedures for ensuring appropriate support for such teams when serving in a country actually or potentially threatened by coercive economic measures, including, as applicable, logistical assistance, office space, information support, and communications.

(5) Negotiation with relevant potential host countries of procedures and methods for ensuring the rapid and effective deployment of such teams, and the establishment of appropriate liaison relationships with local public and private sector officials and entities.

(c) REPORTS REQUIRED.—

(1) REPORT ON ESTABLISHMENT.—Upon establishment of the pilot program required by subsection (a), the Secretary of State shall

provide the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives with a detailed report and briefing describing the pilot program, the major elements of the program, the personnel and institutions involved, and the degree to which the program incorporates the elements described in subsection (a).

(2) FOLLOW-UP REPORT.—Not later than one year after the report required by paragraph (1), the Secretary of State shall provide the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives with a detailed report and briefing describing the operations over the previous year of the pilot program established pursuant to subsection (a), as well as the Secretary's assessment of its performance and suitability for becoming a permanent program.

(3) FORM.—Each report required under this subsection shall be submitted in unclassified form, but may include a classified annex.

(d) DECLARATION OF AN ECONOMIC CRISIS REQUIRED.—

(1) NOTIFICATION.—The President may activate an economic defense response team for a period of 180 days under the authorities of this section to assist a partner country in responding to an unusual and extraordinary economic coercive threat by an adversary of the United States upon the declaration of a coercive economic emergency, together with notification to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives.

(2) EXTENSION AUTHORITY.—The President may activate the response team for an additional 180 days upon the submission of a detailed analysis to the committees described in paragraph (1) justifying why the continued deployment of the economic defense response team in response to the economic emergency is in the national security interest of the United States.

(e) SUNSET.—The authorities provided under this section shall expire on December 31, 2026.

**SA 4434.** Mr. CORNYN (for himself, Mr. COONS, Mr. YOUNG, and Mr. LEAHY) submitted an amendment intended to be proposed to amendment SA 3867 submitted by Mr. REED and intended to be proposed to the bill H.R. 4350, to authorize appropriations for fiscal year 2022 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle G of title X, add the following:

**SEC. 1064. NATIONAL SECURITY EXCLUSION FOR ARTICLES OR COMPONENTS OF ARTICLES THAT CONTAIN, WERE PRODUCED USING, BENEFIT FROM, OR USE TRADE SECRETS MISAPPROPRIATED OR ACQUIRED THROUGH IMPROPER MEANS BY A FOREIGN AGENT OR FOREIGN INSTRUMENTALITY.**

(a) SHORT TITLE.—This section may be cited as the “Stopping and Excluding Commercial Ripoffs and Espionage with U.S. Trade Secrets” or the “Secrets Act of 2021”.

(b) NATIONAL SECURITY EXCLUSION.—Title III of the Tariff Act of 1930 is amended by inserting after section 341 (19 U.S.C. 1341) the following:

**"SEC. 342. NATIONAL SECURITY EXCLUSION FOR ARTICLES OR COMPONENTS OF ARTICLES THAT CONTAIN, WERE PRODUCED USING, BENEFIT FROM, OR USE TRADE SECRETS MISAPPROPRIATED OR ACQUIRED THROUGH IMPROPER MEANS BY A FOREIGN AGENT OR FOREIGN INSTRUMENTALITY.**

"(a) IN GENERAL.—Upon a determination under subsection (c)(1), and subject to the procedures required under subsection (d), the Commission shall direct the exclusion from the United States of, on the basis of national security, imports of articles that contain, were produced using, benefit from, or use any trade secret acquired through improper means or misappropriation by a foreign agent or foreign instrumentality (in this section referred to as a 'covered article').

"(b) INTERAGENCY COMMITTEE ON TRADE SECRETS.—

"(1) IN GENERAL.—There is established an Interagency Committee on Trade Secrets (in this section referred to as the 'Committee') to carry out the review and submission of allegations under paragraph (5) and such other duties as the President may designate as necessary to carry out this section.

"(2) MEMBERSHIP.—

"(A) IN GENERAL.—The Committee shall be comprised of the following voting members (or the designee of any such member):

"(i) The Secretary of the Treasury.

"(ii) The Secretary of Homeland Security.

"(iii) The Secretary of Commerce.

"(iv) The Attorney General.

"(v) The Intellectual Property Enforcement Coordinator.

"(vi) The United States Trade Representative.

"(vii) The head of such other Federal agency or other executive office as the President determines appropriate, generally or on a case-by-case basis.

"(B) DIRECTOR OF NATIONAL INTELLIGENCE.—

"(i) IN GENERAL.—The Director of National Intelligence shall serve as an ex officio, non-voting member of the Committee.

"(ii) NOTICE.—The Director of National Intelligence shall be provided with all notices received by the Committee regarding allegations under paragraph (5) but shall serve no policy role on the Committee other than to provide analysis unless serving on the Committee under subparagraph (A)(vii).

"(3) CHAIRPERSON.—The Attorney General shall serve as the chairperson of the Committee.

"(4) MEETINGS.—The Committee shall meet upon the direction of the President or upon the call of the chairperson, without regard to section 552b of title 5, United States Code (if otherwise applicable).

"(5) UNFAIR TRADE PRACTICE REVIEW.—The Committee—

"(A) shall review upon complaint under oath by the owner of a trade secret or on its own initiative any allegations that an article imported or to be imported into the United States is a covered article; and

"(B) shall, if the Committee decides to proceed with those allegations, submit to the Commission a report including those allegations.

"(c) EX PARTE PRELIMINARY REVIEW, INVESTIGATION, AND DETERMINATION.—

"(1) EX PARTE PRELIMINARY REVIEW.—Not later than 30 days after receipt of an allegation contained in a report under subsection (b)(5)(B) with respect to an article imported or to be imported into the United States, the Commission shall conduct a confidential, ex parte, preliminary review to determine whether the article is more likely than not a covered article.

"(2) INVESTIGATION.—

"(A) IN GENERAL.—Not later than 150 days after an affirmative determination under paragraph (1), the Commission shall conduct an ex parte investigation, which may include a hearing at the discretion of the Commission, to consider if that determination should be extended under paragraph (3).

"(B) ANALYSIS BY DIRECTOR OF NATIONAL INTELLIGENCE.—

"(i) IN GENERAL.—As part of an investigation conducted under subparagraph (A) with respect to an allegation contained in a report under subsection (b)(5)(B), the Director of National Intelligence, at the request of the Commission, shall expeditiously carry out a thorough analysis of the allegation and shall incorporate the views of appropriate intelligence agencies with respect to the allegation.

"(ii) TIMING.—Not later than 20 days after the date on which the Commission begins an investigation under subparagraph (A), the Director of National Intelligence shall submit to the Commission the analysis requested under clause (i).

"(iii) SUPPLEMENTATION OR AMENDMENT.—Any analysis submitted under clause (i) may be supplemented or amended as the Director of National Intelligence considers necessary or appropriate or upon request by the Commission for additional information.

"(iv) BEGINNING OF ANALYSIS BEFORE INVESTIGATION.—The Director of National Intelligence may begin an analysis under clause (i) of an allegation contained in a report under subsection (b)(5)(B) before investigation by the Commission of the allegation under subparagraph (A), in accordance with applicable law.

"(3) EXTENSION, MODIFICATION, OR TERMINATION.—

"(A) IN GENERAL.—The Commission, at its sole discretion, may extend, modify, or terminate a determination under paragraph (1) for good cause and as necessary and appropriate, as determined by the Commission and based on the findings of the investigation conducted under paragraph (2).

"(B) RECONSIDERATION.—The Commission shall reconsider any extension, modification, or termination under subparagraph (A) of a determination under paragraph (1) upon request in writing from the Committee.

"(4) CONSIDERATION.—In conducting a preliminary review under paragraph (1) or an investigation under paragraph (2) with respect to an article, the Commission may consider the following:

"(A) If the article contains, was produced using, benefits from, or uses any trade secret acquired through improper means or misappropriation by a foreign agent or foreign instrumentality.

"(B) The national security and policy interests of the United States, as established by the Committee for purposes of this section.

"(5) DISCLOSURE OF CONFIDENTIAL INFORMATION.—

"(A) IN GENERAL.—Information submitted to the Commission or exchanged among the interested persons in connection with a preliminary review under paragraph (1) or an investigation under paragraph (2), including by the owner of the trade secret with respect to which the review or investigation is connected, may not be disclosed (except under a protective order issued under regulations of the Commission that authorizes limited disclosure of such information) to any person other than a person described in subparagraph (B).

"(B) EXCEPTION.—Notwithstanding the prohibition under subparagraph (A), information described in that subparagraph may be disclosed to—

"(i) an officer or employee of the Commission who is directly concerned with—

"(I) carrying out the preliminary review, investigation, or related proceeding in connection with which the information is submitted;

"(II) the administration or enforcement of a national security exclusion order issued under subsection (d);

"(III) a proceeding for the modification or rescission of a national security exclusion order issued under subsection (d); or

"(IV) maintaining the administrative record of the preliminary review, investigation, or related proceeding;

"(ii) an officer or employee of the United States Government who is directly involved in the review under subsection (d)(2); or

"(iii) an officer or employee of U.S. Customs and Border Protection who is directly involved in administering an exclusion from entry under subsection (d) resulting from the preliminary review, investigation, or related proceeding in connection with which the information is submitted.

"(6) PUBLICATION OF RESULTS.—Not later than 30 days after a determination under paragraph (1) or an extension under paragraph (3), the Commission shall publish notice of the determination or extension, as the case may be, in the Federal Register.

"(7) DESIGNATION OF LEAD AGENCY FROM COMMITTEE.—

"(A) IN GENERAL.—The Attorney General shall designate, as appropriate, a Federal agency or agencies represented on the Committee to be the lead agency or agencies on behalf of the Committee for each action under paragraphs (1) through (3).

"(B) DUTIES.—The duties of the lead agency or agencies designated under subparagraph (A), with respect to an action under paragraphs (1) through (3), shall include assisting in the action and coordinating activity between the Committee and the Commission.

"(8) CONSULTATION.—

"(A) IN GENERAL.—In conducting an action under paragraphs (1) through (3), the Commission shall consult with the heads of such other Federal agencies (or their designees) as the Commission determines appropriate on the basis of the facts and circumstances of the action.

"(B) COOPERATION.—The heads of Federal agencies consulted under subparagraph (A) for an action, and the agency or agencies designated under paragraph (7)(A), shall cooperate with the Commission in conducting the action, including by—

"(i) producing documents and witnesses for testimony; and

"(ii) assisting with any complaint or report or any analysis by the Committee.

"(9) INTERACTION WITH INTELLIGENCE COMMUNITY.—The Director of National Intelligence shall ensure that the intelligence community (as defined in section 3 of the National Security Act of 1947 (50 U.S.C. 3003)) remains engaged in the collection, analysis, and dissemination to the Commission of any additional relevant information that may become available during the course of any action conducted under paragraphs (1) through (3).

"(10) RULE OF CONSTRUCTION REGARDING SUBMISSION OF ADDITIONAL INFORMATION.—Nothing in this subsection shall be construed as prohibiting any interested person to an allegation described in subsection (b)(5) from submitting additional information concerning the allegation while an action under paragraphs (1) through (3) with respect to the allegation is ongoing.

"(d) PROCEDURES FOR NATIONAL SECURITY EXCLUSION.—

"(1) IN GENERAL.—If the Commission determines under subsection (c)(1) that it is more

likely than not that an article to be imported into the United States is a covered article, not later than 30 days after receipt of the allegation described in that subsection with respect to that determination, the Commission shall—

“(A) issue an order directing that the article concerned be excluded from entry into the United States under subsection (a); and

“(B) notify the President of that determination.

“(2) PRESIDENTIAL REVIEW.—If, before the end of the 30-day period beginning on the day after the date on which the President is notified under paragraph (1)(B) of the determination of the Commission under subsection (c)(1), the President disapproves of that determination and notifies the Commission of that disapproval, effective on the date of that notice, that determination shall have no force or effect.

“(3) EXCLUSION OF COVERED ARTICLES.—

“(A) NOTIFICATION.—Upon expiration of the 30-day period described in paragraph (2), or notification from the President of approval of the determination of the Commission under subsection (c)(1) before the expiration of that period, the Commission shall notify the Secretary of the Treasury and the Secretary of Homeland Security of its action under subsection (a) to direct the exclusion of covered articles from entry.

“(B) REFUSAL OF ENTRY.—Upon receipt of notice under subparagraph (A) regarding the exclusion of covered articles from entry, the Secretary of the Treasury and the Secretary of Homeland Security shall refuse the entry of those articles.

“(4) CONTINUATION IN EFFECT.—Any exclusion from entry of covered articles under subsection (a) shall continue in effect until the Commission—

“(A) determines that the conditions that led to such exclusion from entry do not exist; and

“(B) notifies the Secretary of the Treasury and the Secretary of Homeland Security of that determination.

“(5) MODIFICATION OR RESCISSION.—

“(A) IN GENERAL.—An interested person may petition the Commission for a modification or rescission of an exclusion order issued under subsection (a) with respect to covered articles only after an affirmative extension of the order is issued under subsection (c)(3) in accordance with the procedures under subsection (c)(2).

“(B) REVISITATION OF EXCLUSION.—The Commission may modify or rescind an exclusion order issued under subsection (a) at any time at the discretion of the Commission.

“(C) BURDEN OF PROOF.—The burden of proof in any proceeding before the Commission regarding a petition made by an interested person under subparagraph (A) shall be on the interested person.

“(D) RELIEF.—A modification or rescission for which a petition is made under subparagraph (A) may be granted by the Commission—

“(i) on the basis of new evidence or evidence that could not have been presented at the prior proceeding; or

“(ii) on grounds that would permit relief from a judgment or order under the Federal Rules of Civil Procedure.

“(E) EVIDENTIARY STANDARD.—A modification or rescission may be made under subparagraph (A) if the Commission determines that there has been a clear and convincing showing to the Commission from an interested person that such a modification or rescission should be made.

“(e) JUDICIAL REVIEW.—

“(1) IN GENERAL.—Any person adversely affected by a final modification or rescission determination by the Commission under sub-

section (d)(5) may appeal such determination only—

“(A) in the United States Court of Appeals for the Federal Circuit; and

“(B) not later than 60 days after that determination has become final.

“(2) NO OTHER JUDICIAL REVIEW.—Except as authorized under paragraph (1), the determinations of the Commission under this section and any exclusion from entry or delivery or demand for redelivery in connection with the enforcement of an order by the Commission under this section may not be reviewed by any court, including for constitutional claims, whether by action in the nature of mandamus or otherwise.

“(3) PROCEDURES FOR REVIEW OF PRIVILEGED INFORMATION.—If an appeal is brought under paragraph (1) and the administrative record contains classified or other information subject to privilege or protections under law, that information shall be submitted confidentially to the court and the court shall maintain that information under seal.

“(4) APPLICABILITY OF USE OF INFORMATION PROVISIONS.—The use of information provisions of sections 106, 305, 405, and 706 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1806, 1825, 1845, and 1881e) shall not apply to an appeal under paragraph (1).

“(f) INAPPLICABILITY OF THE ADMINISTRATIVE PROCEDURE ACT.—

“(1) IN GENERAL.—The requirements of subchapter II of chapter 5 of title 5, United States Code, shall not apply to—

“(A) an action conducted by the Commission under paragraphs (1) through (3) of subsection (c); or

“(B) the procedures for exclusion under paragraphs (4) and (5) of subsection (d).

“(2) ADJUDICATION.—Any adjudication under this section shall not be subject to the requirements of sections 554, 556, and 557 of title 5, United States Code.

“(g) FREEDOM OF INFORMATION ACT EXCEPTION.—Section 552 of title 5, United States Code (commonly referred to as the ‘Freedom of Information Act’), shall not apply to the activities conducted under this section.

“(h) REGULATIONS.—The Commission may prescribe such regulations as the Commission considers necessary and appropriate to carry out this section.

“(i) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section.

“(j) DEFINITIONS.—In this section:

“(1) ARTICLE.—The term ‘article’ includes any article or component of an article.

“(2) FOREIGN AGENT; FOREIGN INSTRUMENTALITY; IMPROPER MEANS; MISAPPROPRIATION; OWNER; TRADE SECRET.—The terms ‘foreign agent’, ‘foreign instrumentality’, ‘improper means’, ‘misappropriation’, ‘owner’, and ‘trade secret’ have the meanings given those terms in section 1839 of title 18, United States Code.

“(3) INTERESTED PERSON.—The term ‘interested person’, with respect to an allegation under subsection (b)(5), means a person named in the allegation or otherwise identified by the Commission as having a material interest with respect to the allegation.”

(c) CLERICAL AMENDMENT.—The table of contents for the Tariff Act of 1930 is amended by inserting after the item relating to section 341 the following:

“Sec. 342. National security exclusion for articles or components of articles that contain, were produced using, benefit from, or use trade secrets misappropriated or acquired through improper means by a foreign agent or foreign instrumentality.”

(d) CONFORMING AMENDMENT.—Section 514(a)(4) of the Tariff Act of 1930 (19 U.S.C.

1514(a)(4)) is amended by striking “a determination appealable under section 337 of this Act” and inserting “in connection with the enforcement of an order of the United States International Trade Commission issued under section 342”.

**SA 4435.** Mr. GRASSLEY (for himself and Mr. BRAUN) submitted an amendment intended to be proposed to amendment SA 3867 submitted by Mr. REED and intended to be proposed to the bill H.R. 4350, to authorize appropriations for fiscal year 2022 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle B of title XII, add the following:

**SEC. 1216. EVALUATION OF AND REPORT ON WITHDRAWAL FROM AFGHANISTAN.**

(a) EVALUATION.—

(1) IN GENERAL.—The Special Inspector General for Afghanistan Reconstruction (in this section referred to as the Inspector General) shall conduct an evaluation of the performance of the Afghanistan National Defense and Security Forces (in this section referred to as the “ANDSF”) during the period beginning on February 1, 2020, and ending on August 31, 2021.

(2) ELEMENTS.—The evaluation required by paragraph (1) shall include the following:

(A) A determination as to the reason the ANDSF proved unable to defend Afghanistan from the Taliban following the withdrawal of the United States Armed Forces.

(B) An assessment of the impact such withdrawal had on the performance of the ANDSF.

(C) With respect to efforts made by the United States Armed Forces since 2001 to provide training, assistance, and advice to the ANDSF, an analysis of any such effort that impacted the performance of the ANDSF following such withdrawal.

(D) An assessment of the current status of—

(i) equipment provided to the ANDSF by the United States; and

(ii) ANDSF personnel who were trained by the United States.

(E) An identification of the types of military equipment provided by the United States to the military or security forces of Afghanistan that was left in Afghanistan after the withdrawal of the United States Armed Forces, including equipment provided to the air force of Afghanistan.

(F) An assessment whether—

(i) the Taliban has control over the equipment described in subparagraph (B); and

(ii) such equipment is being moved or sold to any third parties.

(G) An assessment whether government officials of Afghanistan fled Afghanistan with United States taxpayer dollars.

(H) An assessment whether funds made available from the Afghan Security Forces Fund—

(i) were stolen by government officials of Afghanistan; or

(ii) diverted from the originally intended purposes of such funds.

(I) An assessment whether equipment provided to the military or security forces of Afghanistan was used to assist government officials of Afghanistan in fleeing Afghanistan.

(J) Any other matter the Inspector General considers appropriate.